

FEE DISCLOSURE RULES

OAKLAND COUNTY BAR ASSOCIATION

EMPLOYEE BENEFITS COMMITTEE – MONDAY, JANUARY 10, 2011

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A. DOL Fee Disclosure Regulations

DOL issued interim final regulations on July 16, 2010 requiring service providers to ERISA retirement plans to disclose to plan fiduciaries information about services they provide and fees they expect to receive

1. Prohibited Transaction Exemption

- ERISA Section 406 prohibits furnishing of services between plan and party in interest.
- ERISA 408(b)(2) provides exemption when services are needed for plan operation, contract is reasonable, and only reasonable compensation is paid for services
- Prior to regulations, not much guidance on what is reasonable.
- Proposed regulations issued December 2007.

2. Effective Date

- Interim final regulations effective July 16, 2011.
- Applies to all contracts for Covered Services after that date. No grandfather rule.

3. What Plans are Covered?

- Only pension plans, not welfare benefit plans (DB, DC including 401(k) and ERISA 403(b) plans).
- Does not apply to IRA's, SEP's, simple IRA's, and non-ERISA plans such as governmental and church plans.

4. Which Service Providers are Covered?

- Providers of Covered Services to plans who reasonably expect \$1,000 or more in direct or indirect compensation.
- Includes services or compensation received by affiliates or subcontractors.
- For indirect compensation, service provider must disclose services to which compensation applies and payer of indirect compensation.

5. What are "Covered Services"

- Fiduciary services such as investment advisory services.
- Services provided as a fiduciary to an investment contract, product or entity that holds plan assets and ERISA plan has direct equity investment i.e. group trusts, insurance company separate accounts or other commingled investment vehicles which constitute ERISA plan assets.

- Recordkeeping or brokerage services to participant-directed individual account plans.
- Other services for indirect compensation such as accounting, auditing, actuarial, appraisal, banking, consulting, custodial, insurance, investment advisory (for plan or participants), legal, recordkeeping, securities or other investment brokerage, third-party administration, or valuation services.
- “Indirect compensation” does **not** include payment from plan, plan sponsor, or the covered service provider, an affiliate or subcontractor (if subcontractor receives payment in connection with its contract with the service provider).

6. What Information is Required to be Disclosed

- Description of Services.
- Direct Compensation – de minimis exception <\$250 Direct compensation is defined as “compensation received directly from the plan”.
- Indirect Compensation – must include identification of services and the payer of the indirect compensation.
- Compensation among related parties, such as commissions and Rule 12b-1 fees. Disclosure must identify service provided, payers, and recipients of compensation.
- No exception for bundled service providers. *Change from proposed regulations.*
- Compensation due upon termination of contract.
- Manner of payment (e.g. bill plan sponsor or through revenue sharing).
- Specific Disclosure for Recordkeeping Services.
 - i. Description of compensation service provider, affiliate, or subcontractor reasonably expects to receive.
 - ii. If recordkeeping is free, reasonable good faith estimate or cost to the plan.
 - Big departure from current requirements and practice.
 - Significant changes required.
- Specific Disclosure for recordkeeping and brokerage services for designated investment options
 - i. A description of compensation charged directly against the investment (such as sales loads or redemption fees);
 - ii. A description of the annual operating expenses of the investment if the return is not fixed; and
 - iii. Any ongoing expenses in addition to annual operating expenses.

7. **When is Disclosure Required?**

- Service providers must provide required information in writing to plan fiduciaries “reasonably in advance” of entering into, extending, or renewing contract for plan services.
- July 16, 2011 for existing arrangements.
- Changes must be disclosed as soon as practicable but no later than 60 days from the date the service provider is informed of the change.

8. **Prohibited Transaction Exemption for Plan Fiduciary if Service Provider Fails to Satisfy Fee Disclosure Rules: Conditions**

- Only available if plan fiduciary did not know service provider would fail.
- Upon discovery of failure, plan fiduciary requests information in writing.
- Plan fiduciary must notify DOL if service provider does not comply within 90 days of request.
- Plan fiduciary must decide whether to continue or to terminate the contract.

9. **Action Items**

- Revise service providers’ contracts to add contractual right to receive timely disclosure – ensure right to terminate contract if disclosures not provided, and no payments owed after breach.
- Review service providers’ disclosures to ensure total compensation is reasonable, and address any conflicts of interest.

B. New Expense Disclosure Regulations

Regulations issued October 20, 2010 require plan fiduciary to disclose investment related information to participants.

1. **Plans Subject to Regulation**

- Participant-directed plans of all sizes. No exclusion for small plans.
- IRAs and SEPs not covered.

2. **Plan Related Information**

- Must be provided before date participant can first direct their investments, and annually thereafter, effective Plan Years starting after November 1, 2011.
- General operational and identification information: Investment instructions, list of the plan’s investment options, and descriptions of any “brokerage windows”.
- Administrative Information: Explanation of fees and expenses for general plan administrative services that may be charged to individual accounts (legal, accounting, recordkeeping) and how (pro rata or per capital).
- Individual Account Expenses: Explanation of fees chargeable to individual account based on actions taken by that person (e.g., fee for plan loan or processing qualified domestic relations order, front or back-end load or sales charges and redemption fees).

d) **Timing and Format.**

- Investment-related information must be furnished on or before date they can first direct investments, and annually thereafter, in chart or similar format.
- Model Comparative Chart Provided in Regulations.
- Must also provide statements that (1) fees and expenses are only one factor to consider in selecting investments and (2) cumulative effect of fees and expenses can substantially reduce growth of participant account.

5. **Action Item**

- Review service provider contracts and HR practices to address these additional disclosures.

APPENDIX to §2550.404a-5 – Model Comparative Chart**ABC Corporation 401k Retirement Plan**
Investment Options – January 1, 20XX

This document includes important information to help you compare the investment options under your retirement plan. If you want additional information about your investment options, you can go to the specific Internet Web site address shown below or you can contact [insert name of plan administrator or designee] at [insert telephone number and address]. A free paper copy of the information available on the Web site[s] can be obtained by contacting [insert name of plan administrator or designee] at [insert telephone number].

Document Summary

This document has 3 parts. Part I consists of performance information for plan investment options. This part shows you how well the investments have performed in the past. Part II shows you the fees and expenses you will pay if you invest in an option. Part III contains information about the annuity options under your retirement plan.

Part I. Performance Information

Table 1 focuses on the performance of investment options that do not have a fixed or stated rate of return. Table 1 shows how these options have performed over time and allows you to compare them with an appropriate benchmark for the same time periods. Past performance does not guarantee how the investment option will perform in the future. Your investment in these options could lose money. Information about an option's principal risks is available on the Web site[s].

Table 1—Variable Return Investments								
Name/ Type of Option	Average Annual Total Return as of 12/31/XX				Benchmark			
	1yr.	5yr.	10yr.	Since Inception	1yr.	5yr.	10yr.	Since Inception
Equity Funds								
A Index Fund/ S&P 500 www. website address	26.5%	.34%	-1.03%	9.25%	26.46%	.42%	-.95%	9.30%
S&P 500								
B Fund/ Large Cap www. website address	27.6%	.99%	N/A	2.26%	27.80%	1.02%	N/A	2.77%
US Prime Market 750 Index								
C Fund/ Int'l Stock www. website address	36.73%	5.26%	2.29%	9.37%	40.40%	5.40%	2.40%	12.09%
MSCI EAFE								
D Fund/ Mid Cap www. website address	40.22%	2.28%	6.13%	3.29%	46.29%	2.40%	-.52%	4.16%
Russell Midcap								
Bond Funds								
E Fund/ Bond Index www. website address	6.45%	4.43%	6.08%	7.08%	5.93%	4.97%	6.33%	7.01%
Barclays Cap. Aggr. Bd.								
Other								
F Fund/ GICs	.72%	3.36%	3.11%	5.56%	1.8%	3.1%	3.3%	5.75%

www. website address					3-month US T-Bill Index			
G Fund/ Stable Value www. website address	4.36%	4.64%	5.07%	3.75%	1.8%	3.1%	3.3%	4.99%
					3-month US T-Bill Index			
Generations 2020/ Lifecycle Fund www. website address	27.94%	N/A	N/A	2.45%	26.46%	N/A	N/A	3.09%
					S&P 500			
					23.95%	N/A	N/A	3.74%
					Generations 2020 Composite Index*			

*Generations 2020 composite index is a combination of a total market index and a US aggregate bond index proportional to the equity/bond allocation in the Generations 2020 Fund.

Table 2 focuses on the performance of investment options that have a fixed or stated rate of return. Table 2 shows the annual rate of return of each such option, the term or length of time that you will earn this rate of return, and other information relevant to performance.

Name/ Type of Option	Return	Term	Other
H 200X/ GIC www. website address	4%	2 Yr.	The rate of return does not change during the stated term.
I LIBOR Plus/ Fixed- Type Investment Account www. website address	LIBOR +2%	Quarterly	The rate of return on 12/31/xx was 2.45%. This rate is fixed quarterly, but will never fall below a guaranteed minimum rate of 2%. Current rate of return information is available on the option's Web site or at 1-800-yyy-zzzz.
J Financial Services Co./ Fixed Account Investment www. website address	3.75%	6 Mos.	The rate of return on 12/31/xx was 3.75%. This rate of return is fixed for six months. Current rate of return information is available on the option's Web site or at 1-800-yyy-zzzz.

Part II. Fee and Expense Information

Table 3 shows fee and expense information for the investment options listed in Table 1 and Table 2. Table 3 shows the Total Annual Operating Expenses of the options in Table 1. Total Annual Operating Expenses are expenses that reduce the rate of return of the investment option. Table 3 also shows Shareholder-type Fees. These fees are in addition to Total Annual Operating Expenses.

Name / Type of Option	Total Annual Operating Expenses		Shareholder-Type Fees
	As a %	Per \$1000	
Equity Funds			
A Index Fund/ S&P 500	0.18%	\$1.80	\$20 annual service charge subtracted from investments held in this option if valued at less than \$10,000.
B Fund/ Large Cap	2.45%	\$24.50	2.25% deferred sales charge subtracted from amounts withdrawn within 12 months of purchase.
C Fund/ International	0.79%	\$7.90	5.75% sales charge subtracted from amounts invested.

Stock			
D Fund/ Mid Cap ETF	0.20%	\$2.00	4.25% sales charge subtracted from amounts withdrawn.
Bond Funds			
E Fund/ Bond Index	0.50%	\$5.00	N/A
Other			
F Fund/ GICs	0.46%	\$4.60	10% charge subtracted from amounts withdrawn within 18 months of initial investment.
G Fund/ Stable Value	0.65%	\$6.50	Amounts withdrawn may not be transferred to a competing option for 90 days after withdrawal.
Generations 2020/ Lifecycle Fund	1.50%	\$15.00	Excessive trading restricts additional purchases (other than contributions and loan repayments) for 85 days.
Fixed Return Investments			
H 200X / GIC		N/A	12% charge subtracted from amounts withdrawn before maturity.
I LIBOR Plus/ Fixed- Type Invest Account		N/A	5% contingent deferred sales charge subtracted from amounts withdrawn; charge reduced by 1% on 12-month anniversary of each investment.
J Financial Serv Co. / Fixed Account Investment		N/A	90 days of interest subtracted from amounts withdrawn before maturity.

The cumulative effect of fees and expenses can substantially reduce the growth of your retirement savings. Visit the Department of Labor's Web site for an example showing the long-term effect of fees and expenses at http://www.dol.gov/ebsa/publications/401k_employee.html. Fees and expenses are only one of many factors to consider when you decide to invest in an option. You may also want to think about whether an investment in a particular option, along with your other investments, will help you achieve your financial goals.

Part III. Annuity Information

Table 4 focuses on the annuity options under the plan. Annuities are insurance contracts that allow you to receive a guaranteed stream of payments at regular intervals, usually beginning when you retire and lasting for your entire life. Annuities are issued by insurance companies. Guarantees of an insurance company are subject to its long-term financial strength and claims-paying ability.

Name	Objectives / Goals	Pricing Factors	Restrictions / Fees
Lifetime Income Option www. website address	To provide a guaranteed stream of income for your life, based on shares you acquire while you work. At age 65, you will receive monthly payments of \$10 for each share you own, for your life. For example, if	The cost of each share depends on your age and interest rates when you buy it. Ordinarily the closer you are to retirement, the more it will cost you to buy a share.	Payment amounts are based on your life expectancy only and would be reduced if you choose a spousal joint and survivor benefit. You will pay a 25%

	you own 30 shares at age 65, you will receive \$300 per month over your life.	The cost includes a guaranteed death benefit payable to a spouse or beneficiary if you die before payments begin. The death benefit is the total amount of your contributions, less any withdrawals.	surrender charge for any amount you withdraw before annuity payments begin. If your income payments are less than \$50 per month, the option's issuer may combine payments and pay you less frequently, or return to you the larger of your net contributions or the cash-out value of your income shares.
Generations 2020 Variable Annuity Option www. website address	To provide a guaranteed stream of income for your life, or some other period of time, based on your account balance in the Generations 2020 Lifecycle Fund. This option is available through a variable annuity contract that your plan has with ABC Insurance Company.	You have the right to elect fixed annuity payments in the form of a life annuity, a joint and survivor annuity, or a life annuity with a term certain, but the payment amounts will vary based on the benefit you choose. The cost of this right is included in the Total Annual Operating Expenses of the Generations 2020 Lifecycle Fund, listed in Table 3 above. The cost also includes a guaranteed death benefit payable to a spouse or beneficiary if you die before payments begin. The death benefit is the greater of your account balance or contributions, less any withdrawals.	Maximum surrender charge of 8% of account balance. Maximum transfer fee of \$30 for each transfer over 12 in a year. Annual service charge of \$50 for account balances below \$100,000.

Please visit www.ABCPlanglossary.com for a glossary of investment terms relevant to the investment options under this plan. This glossary is intended to help you better understand your options.